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OFFICE OF PETITIONS

In re Application of :
Donald Tremblay :
Application No. 09/974,513 : ON PETITION
Filed: 11 October, 2001 :
Att'y Docket No. 4012801601 :

This is a decision on the petition under 1.137(b),¹ filed on 3 December, 2004, to revive the above-identified application.

The petition is **GRANTED**.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 16 March, 2003, for failure to properly reply to the final Office action mailed on 15 November, 2002, which set a three (3) month shortened statutory period for reply. A one (1) month extension of time was obtained on 19 March, 2003. Petitioner filed an amendment after final rejection on 24 January, 2003, and again on 19 March, 2003. Both amendments were found not to place the application in condition for allowance, however, and Advisory Actions were mailed on 11 February, 2003, and 2 April, 2003, respectively. Notice of Abandonment was mailed on 10 September, 2003.

Petitioner has filed a Request for Continued Examination (RCE) and an amendment and Information Disclosure Statement (IDS) as the reply required under 37 CFR 1.114.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Receipt of the Power of Attorney and Change of Correspondence Address Filed on 3 December, 2004, is acknowledged.

Petitioner's request for a Corrected Filing Receipt is acknowledged. In view of the showing of a typographical error, the name of the inventor has been corrected in Office records. A Corrected Filing Receipt is enclosed for petitioner's records.

The application file is being forwarded to Technology Center 3700 for further processing.

²See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

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Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Corrected Filing Receipt